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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE LUIS RUBIO, SR.

Defendant and Appellant.

H033178

(Monterey County
Super. Ct. No. SC960022)

Defendant Jorge Luis Rubio, Sr. appeals from an order entered on November 28, 2007, deeming his term of commitment as a sexually violent predator to be indeterminate and retroactive to his original commitment date of August 18, 2005. Defendant filed timely notice of appeal from this order.

After the trial court entered the order appealed from, this court decided the case of *People v. Whaley* (2008) 160 Cal.App.4th 779 (*Whaley*). There we held that a person committed as a sexually violent predator, “may not be committed to an indeterminate term of commitment retroactive to the first order committing him as a sexually violent predator” (*Id.*, at p. 803.)

As a result of this decision, the parties agree that the order appealed from is invalid, and have filed a joint motion for stipulated reversal of the order committing defendant to an indeterminate term retroactive to his original commitment date.

This court may only reverse a judgment pursuant to stipulation in accordance with the requirements set forth in Code of Civil Procedure section 128, subdivision (a)(8). That section requires us to make specific findings that (1) there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal, and (2) that the grounds for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement. (*Ibid.*)

We find that these requirements are satisfied here. The joint application for stipulated reversal supports the conclusion that there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal because the reversal is based on established law. (See Code Civ. Proc., § 128, subd. (a)(8)(A).)

Further, the grounds for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment. Proceeding with this appeal where this court's precedent is without contrary authority would be a waste of judicial resources. Additionally, the risk that allowing a stipulated reversal in this case will reduce the incentive for pretrial settlement in future cases of this nature is extremely low in light of the fact that *Whaley* was decided after the subject order, and it is unlikely that this situation will arise in the future. (Code Civ. Proc., § 128, subd. (a)(8)(B).)

DISPOSITION

The judgment is reversed pursuant to the stipulation of the parties. Each party to bear their own attorney fees and costs on appeal. The remittitur shall issue forthwith.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.